S.B.CRIMINAL MISCELLANEOUS PETITION NO.750/2006
Raj Kumar Vs. State of Rajasthan

Date of order : 16.06.2006

**HON'BLE MR.JUSTICE DINESH MAHESHWARI, VJ.**

Mrs. Deepika Vyas for the petitioner
Mr.S.K.Vyas, Public Prosecutor

This miscellaneous petition under Section 482 Cr.P.C. has been submitted questioning the legality and propriety of the order dated 23.05.2006 passed by the Judicial Magistrate, Ghatol, District Banswara in Criminal Case No.502/2004 whereby the learned Magistrate while allowing the application of the petitioner dated 20.05.2006 for delivering passport and permitting him to leave the country for joining his service in Kuwait has, inter alia, imposed a condition on the petitioner for depositing Rs.50,000/- in fixed deposit in a Nationalised Bank in the name of the court concerned; and to submit an undertaking for appearance whenever called upon to do so and to positively remain present for recording statements under Section 313 Cr.P.C. The petitioner has assailed the condition of depositing Rs.50,000/- in fixed deposit as harsh and onerous condition and has prayed for modification of the order insofar it relates to the said condition of deposit of the amount.

From the material placed on record by the petitioner, it appears that an FIR was lodged against the petitioner for offence under Section 420 IPC by one Ashok Kumar son of Maganlal with the submissions that the petitioner took Rs.85,000/- from him for sending him to Kuwait and sent visa etc.; that the complainant reached Kuwait on 13.08.2001 but was detained by the police and was put in custody for three months. It was alleged that the petitioner has taken Rs.85,000/- from the complainant who spent another Rs.50,000/- in travel apart from suffering imprisonment in Kuwait for three months.

On the aforesaid complaint, after investigation, the police submitted a negative final report with the observation that the complainant was able to reach Kuwait on proper visa but he was not found working at the place of agreement and hence was caught. The complainant submitted a protest petition and after recording evidence, the learned Magistrate noticed that the petitioner Raj Kumar had agreed to make payment of Rs.55,000/- to the complainant but did not make any payment and on the basis of oral and documentary evidence, took cognizance for the offence under Section 420 IPC by the order dated 25.09.2004. The petitioner is, therefore, undergoing trial.

It appears that the petitioner is serving in Kuwait and, therefore, moved an application before the learned Magistrate that he may be permitted to go back to Kuwait to join his duties and his return ticket is valid upto 30.06.2006 and the petitioner came from Kuwait on leave upto 30.05.2006 and if he would not join duty, his services would be terminated. On this application, learned Magistrate has proceeded to pass the impugned order on 23.05.2006 as noticed hereinbefore.

Mrs.Deepika Vyas, learned counsel for the petitioner has assailed the condition imposed in the order dated 23.05.2006 of deposit of amount of Rs.50,000/- with the submissions that the petitioner is a poor person and is serving in Kuwait to make his ends meet and to maintain his family; and if he would be subjected to an onerous condition of deposit of Rs.50,000/-, that would practically result in preventing him from going to Kuwait and he would suffer irreparable injury. Learned counsel has referred to a decision of this Court in Shanker Lal Vs. Smt.Ansumala & State : 1995 Cr.L.R.(Raj.) 410 and has prayed for suitable modification of the condition of deposit. Learned counsel submitted that though it would be very difficult for the petitioner to make deposit of the amount but however, with reference to the decision in Shanker Lal (supra) submitted that at the most an

amount of Rs.15,000/- may be taken in deposit from the petitioner.

Mr.S.K.Vyas, learned Public Prosecutor has opposed the petition with the submissions that if the petitioner would not be put to this condition of depositing the amount and if he would not return back, complications would arise in trial and the complainant might ultimately suffer and might be deprived of just relief. During the course of submissions, Mr.S.K.Vyas, learned Public Prosecutor fairly suggested that reasonable amount may be ordered to be deposited by the petitioner and the condition to that extent may be modified.

Having given thoughtful consideration to the submissions and having perused the material placed on record, this Court is of opinion that the condition as imposed by the learned Magistrate of depositing Rs.50,000/- is apparently too harsh and onerous and may practically amount to depriving the petitioner of the benefit of the order dispensing with his presence and permitting him to go to Kuwait.

It is true that the Magistrate has taken cognizance for the offence under Section 420 IPC with the observations that the petitioner had agreed to make payment of Rs.55,000/- as damages to the complainant, however, the fact remains that the ingredients of offence under Sec.420 IPC are yet to be established and at this stage of proceedings, it cannot be

assumed that the petitioner has committed offence of cheating; nor it could be assumed that the petitioner is in debt of Rs.55,000/- to the complainant. Putting a condition of deposit of Rs.50,000/- in the circumstances of the case does not appear to be a sound exercise of discretion and is likely to result in failure of justice.

Having regard to the overall facts and circumstances of this case, this Court is of opinion that interest of justice will meet if the condition imposed by the learned Magistrate is modified and instead of fixed deposit of Rs.50,000/-, the petitioner is directed to make fixed deposit of Rs.20,000/- in the name of the trial court.

Accordingly, this miscellaneous petition is allowed in part and to the extent indicated above; the order dated 23.05.2006 is otherwise maintained but with the modification that the condition as stated in the operative portion of the order for depositing of amount of Rs.50,000/- as security in the name of the trial court shall stand substituted by an amount of Rs.20,000/- (Rupees Twenty Thousand).

(DINESH MAHESHWARI),VJ.

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